

Staff Summary Report



Hearing Officer Hearing Date: November 6, 2007

Agenda Item Number: 11

SUBJECT: This is a public hearing for a request by the **ABOUCAR RESIDENCE** located at 30 East Bishop Drive for one (1) variance.

DOCUMENT NAME: 20071106dsjc01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by the **ABOUCAR RESIDENCE (PL070442)** (Christopher Abouchar, applicant/property owner) located at 30 East Bishop Drive in the R1-10, Single Family Residential District for:

VAR07027 Variance to reduce the rear yard setback from twenty-five feet (25') to twelve feet (12') for a patio cover.

PREPARED BY: Jon Christopher, Planner II (480-350-8436)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

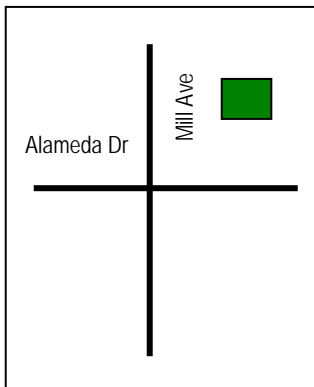
A handwritten signature in black ink, appearing to read 'SEA', located below the 'REVIEWED BY' line.

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Denial

ADDITIONAL INFO: The applicant is seeking a variance to reduce the required rear yard from twenty-five feet (25') to twelve feet (12') for a patio cover. To date, the Abouchar Residence had a neighborhood meeting on September 19, 2007 and has received twelve (12) signatures in support of the variance. Staff has recommended denial of the variance owing to lack of hardship, special circumstances and evidence indicating potential loss of substantial property rights.



PAGES:

1. List of Attachments
2. Comments
3. Reason(s) for Denial; Conditions of Approval; History & Facts/Description
Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-5. Letter of Intent
6. Site plan
7. Elevation plan
8. Petition of support
- 9-10. Staff Photograph(s)

COMMENTS:

The Abouchar Residence is before the Hearing Officer to request a variance to reduce his rear yard setback from twenty-five feet (25') to twelve feet (12'). The property is located at 30 East Bishop Drive in the R1-10, Single Family Residential District, located in a subdivision called Alameda Estates. The subdivision is bordered by four streets, Mill Avenue, Alameda Drive, College Avenue and Broadmor Drive. The lots within the Alameda Estates Subdivision are similar in lot size with few lots having an irregular shape.

The applicant had the required neighborhood meeting for the variance held on September 19, 2007. Approximately fifteen (15) people that attended that meeting, which resulted in twelve of the fifteen neighbors signing a petition supporting the Abouchar request for variance. The approval criteria for a variance (Zoning and Development Code) have not been met. There doesn't appear to be a hardship, and moreover, no special circumstance or condition applies to the land. Finally, the property has an eight foot (8') easement from the rear property line that cannot be impacted by development.

To date, staff has received no inquiry in person regarding this case. A signed letter (petition) of support was filed in response to the request for this variance.

Variance

The Zoning and Development Code requires a variance to reduce the rear yard setback from twenty-five feet to 12 feet (25' to 12') in the R1-10, Single Family Residential District.

Evaluating the variance, the proposal does not appear to meet the criteria for approving the variance:

- a. There are special circumstances or conditions applying to the land, building, or use referred to in the application;
 - The applicant has indicated that the special circumstance is a need of more livable space. There is no evidence of special circumstance keeping with the land, building or use.
- b. That authorizing the variance is necessary for the preservation and enjoyment of substantial property rights;
 - A required rear yard setback of twenty-five feet (25') to twelve feet (12') for a patio is not necessary for enjoyment of substantial property rights.
- c. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
 - The owner has created this variance by proposing a new patio cover that encroaches into the required rear yard setback so therefore, this is self-imposed by the owner.

Neighborhood Meeting

Applicant had the neighborhood meeting on Wednesday September 19, 2007 at 7:00 p.m.

Fifteen (15) neighbors attended the meeting and only twelve (12) signed petition letter in support. They had architectural drawings to explain the required rear set back variance. There was no opposition as result of the meeting.

Conclusion

Staff recommends denial of the variance.

**REASON(S) FOR
DENIAL:**

1. No special circumstances or conditions applying to the land, building or use exist.
2. The authorizing of the variance is not necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance(s) may be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

**SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE
FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.**

**CONDITION(S)
OF APPROVAL:**

1. Obtain all necessary clearances from the Building Safety Division.
3. The cover patio shall match the main residence in color, design and materials.

HISTORY & FACTS:

November 23, 1976

The Board of Adjustment approved a variance for Suggs Homes to reduce the required rear yard set back from twenty five feet (25') to twenty two feet (22') to construct a patio cover located at 24 East Bishop Drive.

DESCRIPTION:

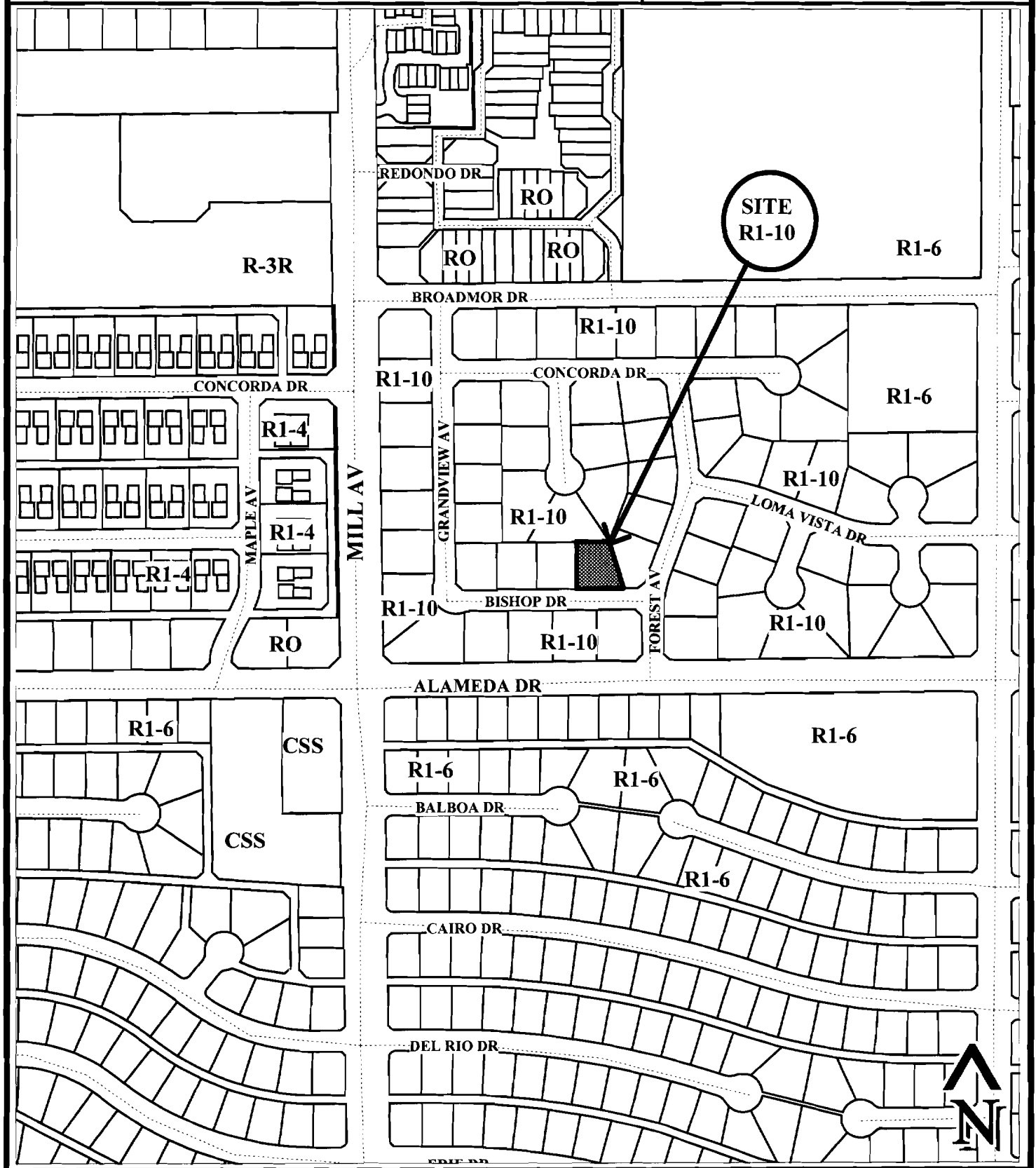
Owner – Christopher Abouchar
Applicant – Christopher Abouchar
Existing Zoning – R1-10, Single Family Residential District
Existing required rear yard set back - 25 feet
Proposed rear yard set back - 12 feet
Building Area - 2,537 s.f.
Lot area – 10, 128 s.f.
Lot Acres – .23 acres
Year Built - 1978

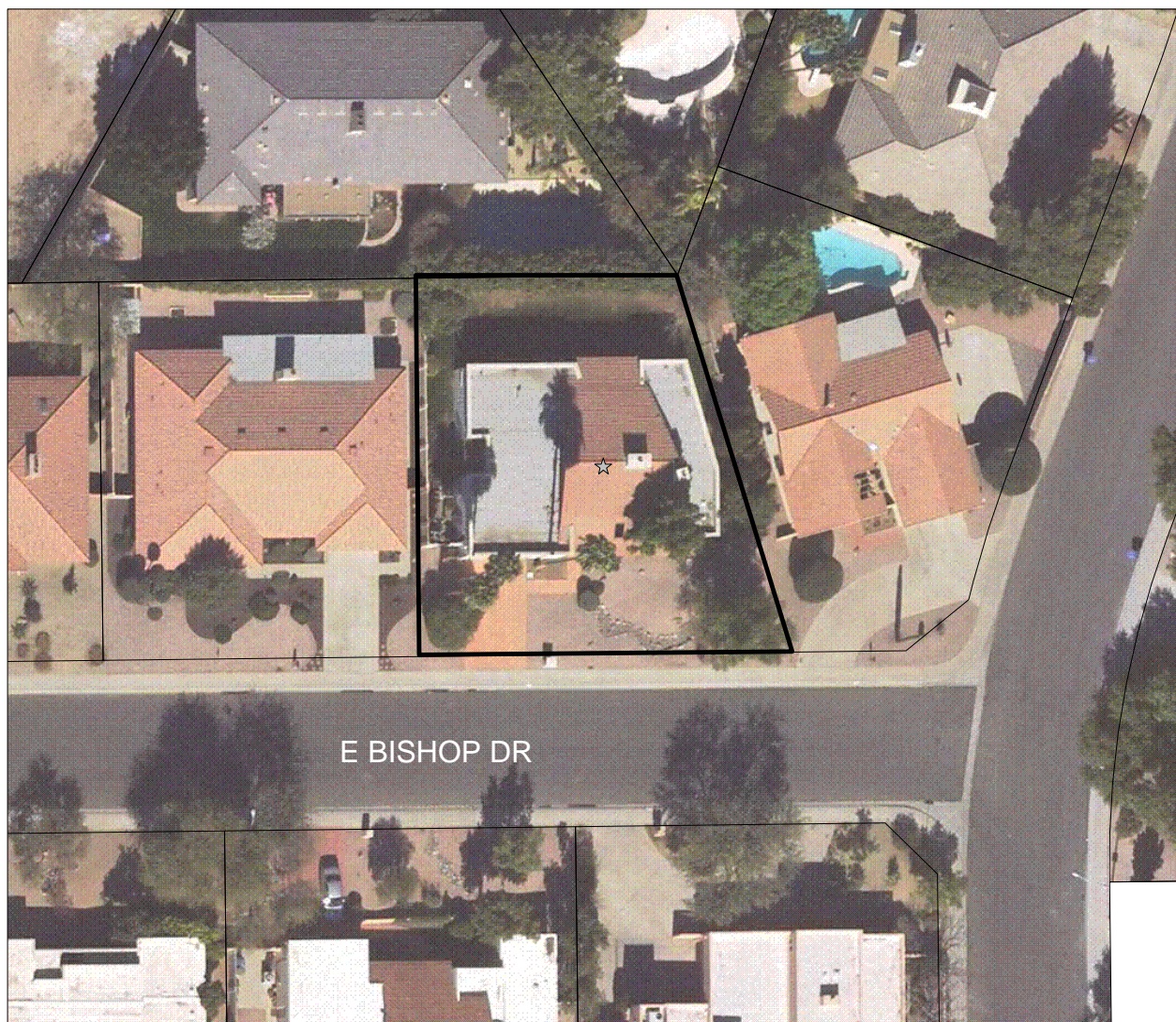
**ZONING AND
DEVELOPMENT
CODE REFERENCE:**

Part 6, Chapter 3, Section 6-309: Variances

ABOUCAR RESIDENCE

PL070442





ABOUCAR RESIDENCE (PL070442)

**VARIANCE REQUEST
LETTER OF EXPLANATION
ALAMEDA ESTATES
30 EAST BISHOP DR.
TEMPE AZ 85282**

To: Hearing Officer

Summary

We are recent buyers of the house on 30 East Bishop Drive in the Alameda Estates subdivision. We decided to lay roots and raise our family in Tempe and in this house. The property Parcel #: 133-22-057 with 2,537 Square Feet of Living Space and 10,128 of Lot Square Footage.

We wish to build a covered patio off the house in the backyard. Our preliminary plans require a Variance to change the Rear Setback to 12 feet.

Reason for Request

The existing zoning is R1-10 and the corresponding Development Standard's Rear Setback is 25 feet. The preliminary patio plans have it encroaching into that Setback approximately 12 feet.

Justification of Request

We feel that the existing Development Standard Rear Setback imposes a hardship on us because it does not allow us to enjoy the same substantial property rights as other residents within the Alameda Estates subdivision, as well as other R1-10 zoned residents.

In support of our claim we provide the following for your consideration:

- a) Our home's Livable Area is average for the subdivision but our lot size is one of the smallest (and is also the minimum lot size for R1-10 zoning). In numbers, our home's Livable Floor area is approximately equal to the average of other homes in Alameda Estates, however, 85% of them have a larger lot size. In other

words, our home is average size for the subdivision but on a very small lot relative to others in it. This suggests that the vast majority of our neighbors enjoy more benefits of living in this R1-10 subdivision than we do; one being that may build terraces, accessory structures and/or buildings while not encroaching on a particular Setback.

- b) Except for a 15 Foot corner, the home is entirely enveloped by Setbacks, despite the fact that is an average sized home in the subdivision.
- c) In addition to the negative impact of the small lot size relative to others in the subdivision mentioned previously, our lot is an irregular shape that further exacerbates our ability to enjoy the land we own. It is a trapezoid with a larger front lot line than in the rear, therefore we have more land in a section that cannot reasonably be enjoyed.

Precedents

The analysis of the attached aerial photograph has revealed that some properties within the subdivision might be encroaching on the Standard Development Rear Setback. They are:

1. 24 E BISHOP DR, Parcel #133-22-056

This property has a covered terrace that is approximately 16 feet from the rear lot line and therefore is encroaching into the Rear Setback. The terrace is over 200 Square Feet and could not be classified as an exception.

2. 2527 S MYRTLE AVE, Parcel #133-22-066

This property has a covered structure that appears to be over 200 Square Feet and is approximately 18 feet from the lot line, and it may be encroaching into the Rear Setback.

Our lot does not even comply with the R1-10 Development Standards of Minimum Lot Width of 90 Feet because it has a minimum width of 76 Feet. A lot width of 76 Feet is consistent with an R1-7 zoning that has a Rear Setback requirement of only 15 Feet.

Neighborhood Impact

We believe that if our Variance Request is approved it will not adversely affect the neighborhood's architecture nor the enjoyment of our neighbor's rights or lifestyle.

Additionally we received a very positive response from residents during the Neighborhood Meeting. The meeting took place on 19 September 2007 and was well attended. Over 15 people came and of which none expressed any opposition, and 12 signed in support of our variance request as shown in the attachment.

Conclusion

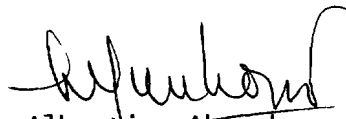
We believe that our Variance Request is reasonable, will not negatively impact neighbor's rights, will relieve our hardship and is consistent with the overall goal of zoning restrictions and development standards. We request that you approve our petition without further ado.

Thank you for your consideration.

Sincerely,



Christopher Abouchar

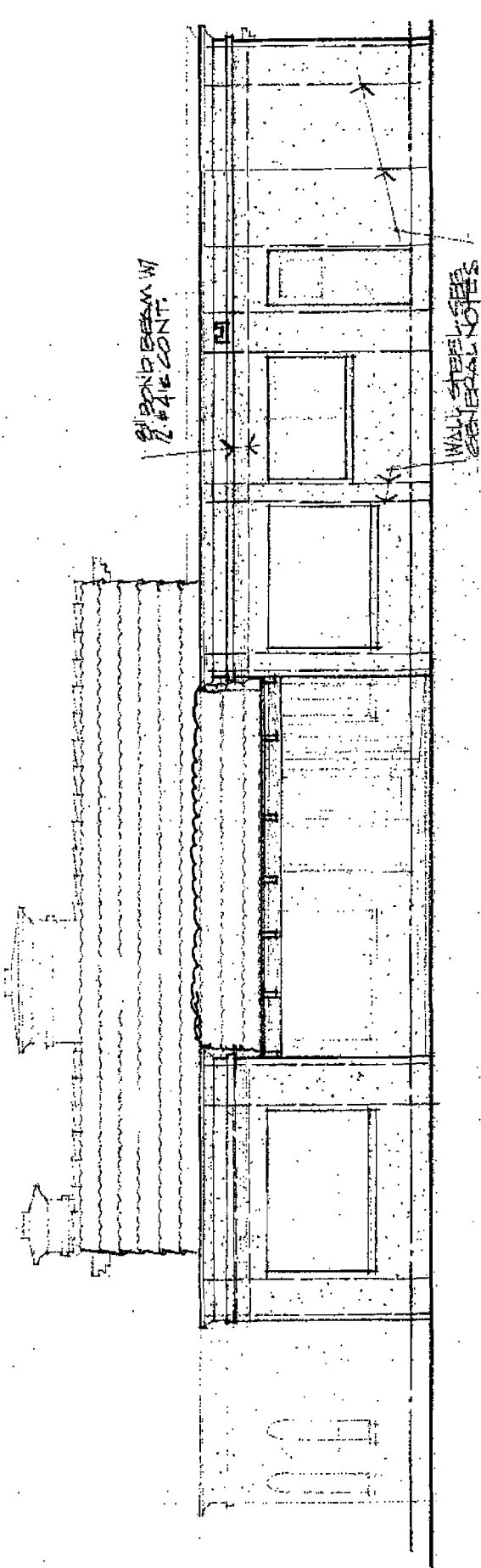

Albertina Abouchar

9-17-07

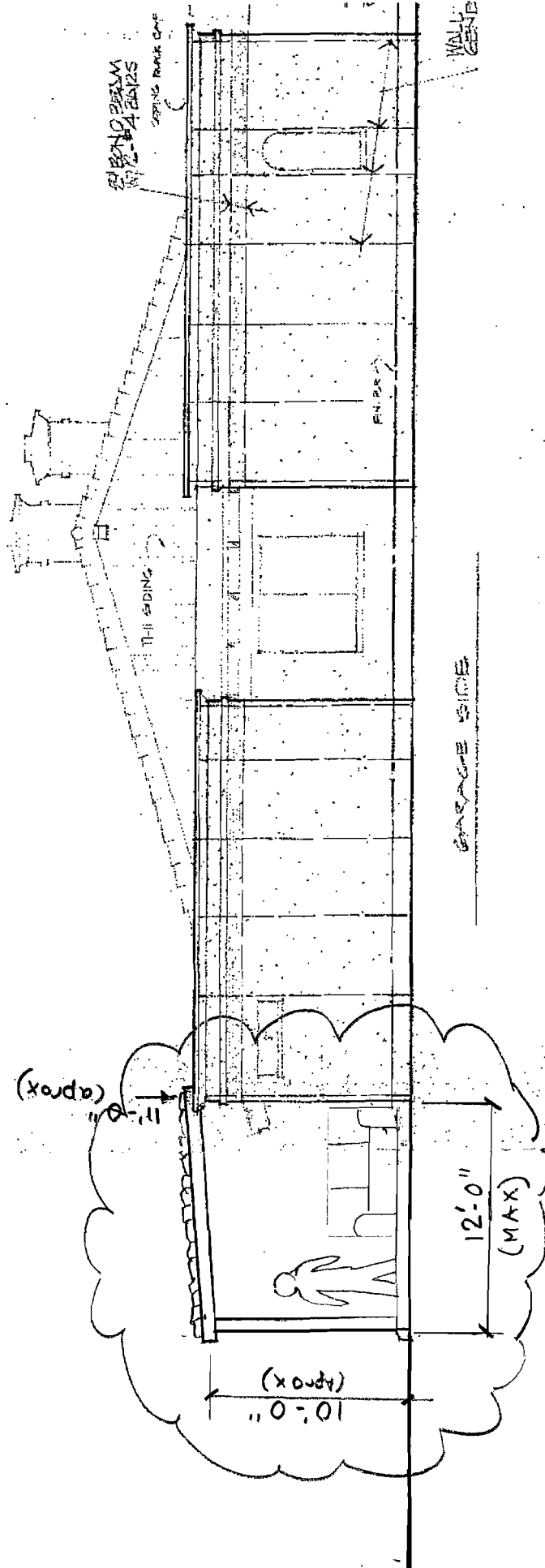


30 E BISHOP, TEMPE AZ COVERED TERRACE PROPOSAL

9-17-07



REAR



We the undersigned approve of the
Variance request by Mr. & Mrs. C. Bouchard
to build a covered patio in their
backyard (of 30 E Bishop Dr. Tempe AZ)

DAVID H. GYSTON 77 E BISHOP

TERRY OLSON 129 E THOMA VISTA

TERESA WILKERSHAM 2613 S. FOREST AVE.

SHARON WILKINSON

JOE WILKINSON } 18 E BISHOP DR.

SARAH McNAUGHTON

BARRY McNAUGHTON } 2524 S. FOREST AVE.

JOYCE LARSON

ALYCE LARSON } 2617 S. FOREST AVE.

GAIL PHILIPPS 36 E. BISHOP

KAREN LUNDGREN 25 E. BISHOP



ABOUCAR RESIDENCE

30 E BISHOP DR

PL070442

FRONT OF RESIDENCE: VIEW TO NORTH



ABOUCAR RESIDENCE

30 E BISHOP DR

PL070442

REAR YARD OF RESIDENCE: VIEW TO SOUTH